

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES ALLEN EMLEY,)
Petitioner,) CASE NO. C08-1292-RAJ-BAT
v.)
STEVEN SINCLAIR,) REPORT AND RECOMMENDATION
Respondent.)

)

On August 28, 2008, petitioner submitted to this Court for review a petition for writ of habeas corpus under 28 U.S.C. § 2254. In his petition, petitioner identified the conviction under attack as a 2008 Department of Corrections proceeding which resulted in a 60 day sentence for violating a no contact order. After reviewing the petition, this Court determined that petitioner had not demonstrated that any of his claims was eligible for federal habeas review. Accordingly, on September 30, 2008, this Court issued an order declining to serve petitioner's federal habeas petition and granting him leave to amend his petition to correct certain specified deficiencies.

Among the deficiencies identified by the Court in its September 30, 2008, Order were that:

(1) petitioner had not demonstrated that he was “in custody” for purposes of the conviction he sought to challenge in his petition; (2) petitioner had not identified a federal constitutional basis for his

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1 federal habeas claims; and, (3) petitioner had not demonstrated that each of his claims for federal
2 habeas relief had been properly exhausted in the state courts. Petitioner was granted thirty days within
3 which to file an amended petition correcting the specified deficiencies.

4 On October 27, 2008, petitioner submitted an amended federal habeas petition to the Court for
5 review. In his amended petition, petitioner identifies the conviction under attack as an April 2008,
6 Whatcom County Superior Court conviction on a charge of bail-jumping. Petitioner identifies a single
7 ground for relief in his amended petition which, liberally construed, alleges that the prosecutor in
8 petitioner's criminal proceedings abused his authority in charging petitioner with bail-jumping.
9 Petitioner concedes that he did not raise this issue on appeal and he appears to argue that his failure to
10 exhaust is attributable to the fact that he did not know the factual basis for the claim at the time of his
11 conviction. Regardless of whether petitioner was aware of the factual basis of his claim at the time of
12 his conviction, it is clear that he is aware of it now. It is also clear that petitioner has ample time
13 remaining to pursue his federal habeas claim in the state courts by way of a collateral attack on his
14 judgment.

15 As petitioner has not exhausted his claim for federal habeas relief in the state courts, that claim
16 is not eligible for federal habeas review. Accordingly, this Court recommends that petitioner's federal
17 habeas petition be dismissed without prejudice. A proposed order accompanies this Report and
18 Recommendation.

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20 DATED this 3rd day of November, 2008.

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23 BRIAN A. TSUCHIDA
24 United States Magistrate Judge
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